

JPA File No.: 07-121

AG Contract No.: P001-2007-004107

Section: SR 303 L/White Tanks

ADMPU Hydrology Study

TRACS No.: H7392 01L

Budget Source 42308

FCDMC IGA FCD 2007A003

Agenda Item C-69-08-034-2-00

DATE FILED WITH MARICOPA COUNTY RECORDER _____

When Recorded Return to:
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

**INTERGOVERNMENTAL AGREEMENT
SR 303 L/White Tanks ADMPU Hydrology Study**

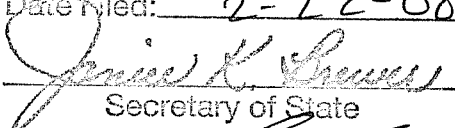
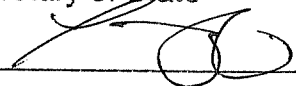
BETWEEN
THE STATE OF ARIZONA
AND
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

THIS AGREEMENT is entered into this date February 22, 2008, as amended, between the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors (the "FCDMC") and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "STATE"). The FCDMC and the STATE are collectively referred to as the "Parties".

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the STATE.

2. The FCDMC is empowered by Arizona Revised Statutes Section 48-3603, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the FCDMC.

NO. 29706
Filed with the Secretary of State
Date Filed: 2-22-08

Secretary of State
By: 

3. The State Route (SR) 303L/White Tanks Area Drainage Master Plan (ADMP) was developed in 1995 and updated in 2005 (ADMPU), to identify and develop solutions to mitigate flooding hazards in the White Tanks drainage area. The ADMPU recommended the construction of a regional 100-year drainage system adjacent to the proposed SR 303L to intercept storm water flows and provide an outfall to the Gila River.

4. The ADMPU recommendations for the SR 303L Drainage Improvements are as shown in Exhibit A, which consist of 17.5 miles of channel and 10 off-line basin sites from north of Bell Road to the Gila River along the proposed SR 303L alignment.

5. The total cost of the SR 303L Drainage Improvements, excluding operation and maintenance costs, will be shared by the Parties. The FCDMC and the STATE are developing agreements to determine the cost-share obligations for design and construction of the facilities.

6. Resolution FCD 2005R017 authorizes the FCDMC to move forward with projects recommended as part of the SR 303L/White Tanks ADMPU including developing and negotiating intergovernmental agreements (IGAs) and other agreements; acquiring rights-of-way; and procuring project engineering design services, subject to the ratification and approval of the Board of Directors.

7. A total revision to the ADMPU hydrology models is warranted due to significant development in the study area and the FCDMC's adoption of the new National Oceanic Atmospheric Administration's rainfall intensity measurements (NOAA-14). Developing new hydrology may allow for downsizing of the projects and reduction in costs proposed in the 2005 ADMPU.

8. The purpose of this Agreement is to identify and define the responsibilities of the FCDMC and the STATE for the cost sharing, planning, analysis, and preparation of the SR 303L/White Tanks ADMPU Hydrology Study, hereinafter referred to as the "STUDY". The FCDMC and the STATE will share the STUDY cost fifty/fifty (50/50) which is estimated at a total cost of \$500,000.00.

9. The STUDY will include, but not be limited to, 1) Establishing the existing conditions in the watershed; 2) Producing a maximum of five detailed hydrology models, including future and existing conditions; 3) Incorporating the NOAA-14 rainfall intensity guidelines in the hydrology models; 4) Determining the impact of the new hydrology on projects recommended in the ADMPU; 5) Determining the impact of the 100-year, 10-day storm in areas of the watershed that include the White Tanks FRS No. 3 and White Tanks FRS No. 4 structures; and 6) Conducting public and stakeholder involvement.

THEREFORE, in consideration of the mutual covenants expressed herein, this Agreement is amended as follows:

II. SCOPE OF WORK

1. The FCDMC will:

a. Serve as the lead agency for funding, contracting for consultant services, and all project management tasks required to complete the STUDY. This includes, but is not limited to, all day-to-day tasks such as responding to data requests, public involvement activities, scheduling meetings, interagency coordination, conducting work-product reviews, obtaining necessary rights-of-entry and providing final review on the hydrology models.

b. Be responsible for contract administration and payment to the STUDY consultant for work performed in accordance with the contract documents.

- c. Invoice the STATE \$125,000.00 upon award of the contract. Upon completion of the STUDY invoice the STATE for the remainder of the 50% cost share of the actual STUDY cost.
- d. Develop the consultant scope of services for the STUDY through a scoping process.
- e. Conduct public involvement activities regarding the STUDY if needed.
- f. Provide interim and final project submittals to the STATE for review and comment.
- g. Resolve and/or incorporate the STATE comments as required.
- h. Fully include the STATE in the consultant selection, scoping process, and other meetings for the STUDY.
- i. Be responsible for any additional costs for delays attributable to the FCDMC.

2. The STATE will:

- a. Reimburse the FCDMC \$125,000.00 upon award of the contract and within 30 calendar days of receipt of approved invoices, for the STUDY. Reimburse the FCDMC the remainder of the 50% cost share of the actual STUDY cost, currently estimated at \$125,000.00.
- b. Review and provide comments on interim and final project submittals within four (4) weeks of receipt of the submittals.
- c. Fully and actively participate in STUDY including sharing data and attending scoping, consultant selection, progress, stakeholder and public meetings.
- d. Be responsible for any additional costs for delays attributable to the STATE.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall expire five (5) years from the date of recording with the County Recorder or upon completion of the STUDY and after all funding obligations and reimbursements have been satisfied in accordance with this Agreement, whichever is the first to occur. However, by mutual written agreement of the Parties, this Agreement may be amended or terminated.

2. Each Party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and save harmless the others (indemnitees) including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitee.

3. The Parties agree to retain all books, accounts, reports, files and other records relating to this Agreement and to make such available at all reasonable times for inspection and audit by the Parties to this Agreement, or their agents, during the term of and for a period in accordance with the State approved Retention Schedule or five years, whichever is longer, after completion of this Agreement.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
6. This Agreement is subject to cancellation by either Party pursuant to the provisions of Arizona Revised Statutes Section 38-511.
7. In the case of any dispute over any items in this Agreement, the Parties agree to use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the Parties to seek any remedies provided by law.
8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
9. Each Party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with this STUDY, including but not limited to the following, unless specifically identified otherwise in this Agreement: management and administration.
10. If legislation is enacted after the effective date of this Agreement that changes the relationship or structure of one or more Parties to this Agreement, the Parties agree that this Agreement shall be renegotiated at the written request of either Party.
11. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".
12. Non-Availability of Funds: Every payment obligation of the STATE and FCDMC under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the STATE or FCDMC at the end of the period for which the funds are available. No liability shall accrue to the STATE or FCDMC in the event this provision is exercised, and the STATE and FCDMC shall not be obligated or liable for any future payments as a result of termination under this paragraph.
13. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation Joint Project Administration 205 South 17 th Avenue, Mail Drop 616E Phoenix, AZ 85007 FAX: 602-712-7424	Flood Control District of Maricopa County Chief Engineer and General Manager 2801 West Durango Street Phoenix, Arizona 85009 FAX: 602-506-8561
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14. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.


FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
A Municipal Corporation

Recommended by:

 12/4/07


TIMOTHY S. PHILLIPS, P.E. Date
Chief Engineer and General Manager

Approved and Accepted:

By:  FEB 06 2008


Chairman, Board of Directors Date

Attest:

By:  FEB 06 2008

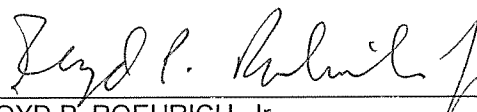
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD **2007A003** has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned Deputy County Attorney, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

 12/28/07

Deputy County Attorney Date

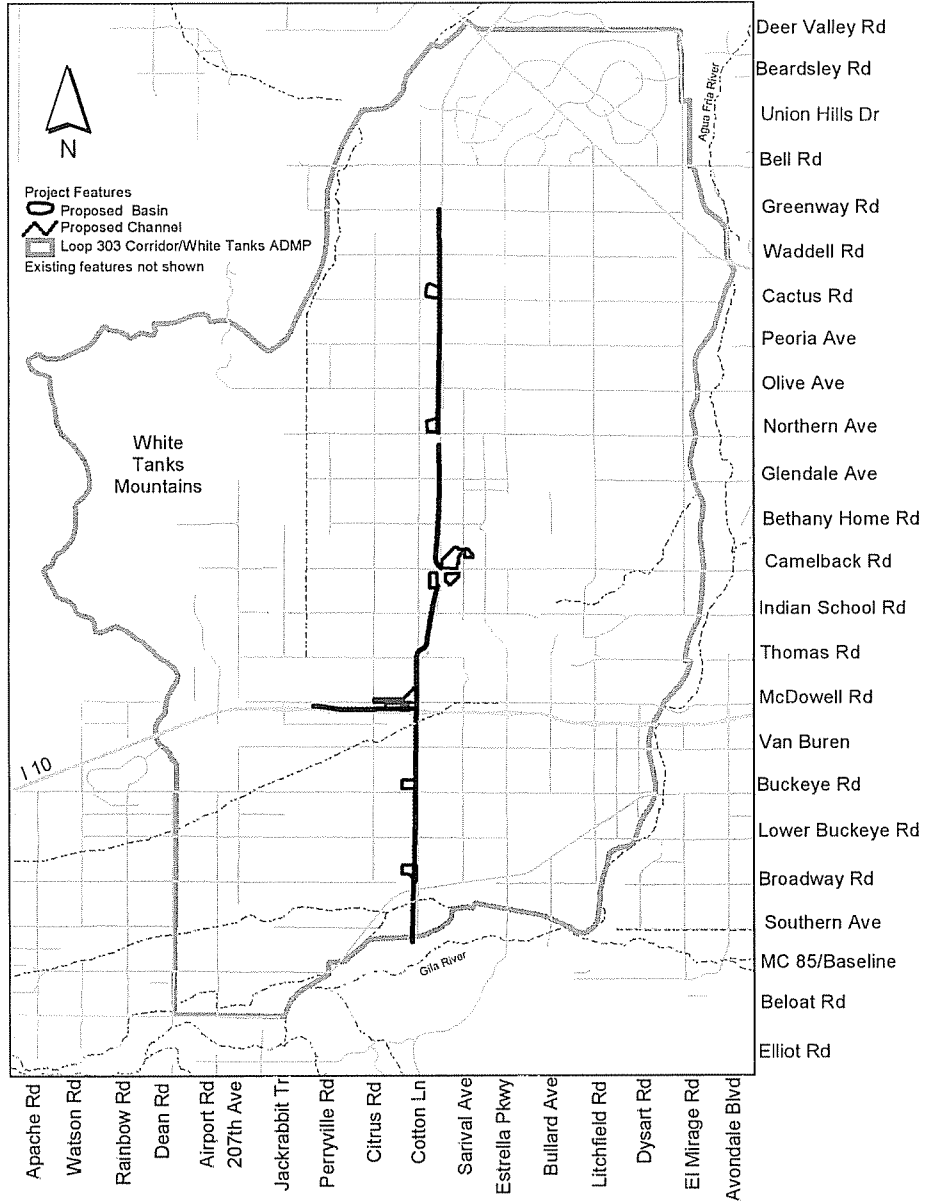
ARIZONA DEPARTMENT OF TRANSPORTATION

By:  _____
FLOYD P. ROEHRICH, Jr.
Deputy State Engineer, Valley Transportation

11 Feb. 08

Date

EXHIBIT "A"
IGA FCD 2007A003
JPA 07-121



Agenda Activity:	Action	Agenda Number:	C-69-08-034-2-00
Department:	Flood Control District		
Category:	Regional Development Services		
Contact:	Jennifer Pokorski	Phone: 602-506-4695	Continued from:
Return to:	Melissa Bauer	Phone: 602-506-4433	
Location:	FLOOD CONTROL OFFICE BLDG		

Action Requested:

Approve IGA FCD2007A003 between the Flood Control District of Maricopa County (FCDMC) and the Arizona Department of Transportation (STATE) for the cost share, planning, analysis and preparation of the SR303/White Tanks ADMPU Hydrology Study. The FCDMC and the STATE will share the study cost fifty/fifty (50%/50%) which is estimated at a total cost of \$500,000.

Complete description of action requested:

The Loop 303/White Tanks Area Drainage Master Plan (ADMP) was developed in 1995 and updated in 2005 (ADMPU), to identify and develop solutions to mitigate flooding hazards in the White Tanks drainage area. The ADMPU recommended the construction of a regional 100-year drainage system adjacent to the proposed SR 303L to intercept storm water flows and provide an outfall to the Gila River. The ADMPU recommendations for the SR 303L Drainage Improvements consist of 17.5 miles of channel and 10 basin sites from north of Bell Road to the Gila River along the proposed SR 303L alignment.

The total design and construction cost of the SR 303L Drainage Improvements, excluding operation and maintenance costs, will be shared by the FCDMC and the STATE per future agreements subject to approval by the Board.

A total revision to the ADMPU hydrology models is warranted due to significant development in the study area and the FCDMC's pending adoption of the new National Oceanic Atmospheric Administration's rainfall intensity measurements (NOAA-14). Developing new hydrology may allow for downsizing of the projects and reduction in the total costs of the drainage features proposed in the 2005 ADMPU.

The purpose of this IGA is to identify and define the responsibilities of the FCDMC and the STATE for the cost sharing, planning, analysis, and preparation of the SR 303L/White Tanks ADMPU Hydrology Study (STUDY). The FCDMC and the STATE will share the STUDY cost fifty/fifty (50/50) which is estimated at a total cost of \$500,000.00.

Resolution FCD 2005R017 authorizes the FCDMC to negotiate and prepare intergovernmental agreements with ADOT, other municipalities, agencies and others, as appropriate, for cost sharing, rights-of-way acquisition, design, construction, construction management and future operation and maintenance for the Loop 303 Drainage Improvements.

This study impacts Supervisory Districts 4 & 5.

PERFORMANCE INFORMATION:

Program: Flood Hazard Remediation

Activity: Capital Projects

Performance Measure: % of the CIP plan which is initiated and measured in square miles which are benefited from CIP projects in current fiscal year.

Anticipated Results: Increased public safety and protection of infrastructure, as well as continued fiscal responsibility.

Goal Achievement: Beginning in FY2004-2005 and for each year for the next five years, the Flood Control District will continue to provide maximum flood hazard mitigation to the people who live and work in Maricopa County by annually completing 10% of the structural projects listed in the CIP plan. To the extent allowed by its enabling statutes, the District will include provisions for multiple use opportunities incorporating the principles of landscape architecture and land use planning in their siting, planning, and design.

Expenditure Impact by FY(s):

Estimated FY 2008 \$250,000 Expenditures

Estimated FY 2009 \$250,000 Expenditures


Estimated FY 2008 \$125,000 Revenue

Estimated FY 2009 \$125,000 Revenue

"Please return a recorded original to the Clerk of the Board of Supervisors."

Routing: Meeting Date: 02/06/2008		
Legend X=Pending A=Approved R=Rejected		
CNTY_ENGR	LEGAL	OMB
A	A	A



<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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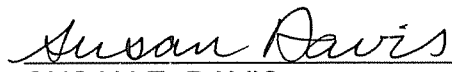
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007004107 (**JPA 07-121-I**), an Agreement between public agencies, i.e., The State of Arizona and the Flood Control District of Maricopa County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 13, 2008

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:146736
Attachment